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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 88 (JSR)

5 LORD ANING,

6 Defendant.

Sentencing

7
8 New York, N.Y.
9 February 28, 2022
4:35 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: SAGAR K. RAVI, ESQ.

Assistant United States Attorney

17 KLINGEMAN CERIMELE, ATTORNEYS

18 Attorneys for Defendant

19 BY: ERNESTO CERIMELE, ESQ.

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(Case called)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MR. RAVI: Good afternoon, your Honor. Sagar Ravi for the United States.

THE COURT: Good afternoon.

MR. CERIMELE: Good afternoon, your Honor. Ernesto Cerimele, attorney for defendant Lord Aning, standing to my left.

THE COURT: Good afternoon. Please be seated.

All right. We're here for sentencing. And the first order of business is to calculate the guideline level, even though, as all counsel are doubtless aware, I give the guidelines very little weight. I should say I give the guidelines the weight that they deserve, which is modest.

Anyway, the presentence report calculates the total offense level as 24, the criminal history category as I, and the guideline range as therefore 51 to 63 months. Any disagreement with that from the government?

MR. RAVI: No, your Honor.

THE COURT: From the defense.

MR. CERIMELE: No, your Honor.

THE COURT: The Court also agrees and will adopt that guideline range and also adopt the presentence report.

So now we turn to what is of great interest to the

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1 Court, which is what sentence to impose under Section 3553(a),
2 and we'll hear from counsel and then from the defendant if he
3 wishes to be heard.

4 Counsel should go to the rostrum, and you can take off
5 your mask, which makes it much easier for the court reporter to
6 pick up the nuances of your remarks. So we'll hear first from
7 defense counsel.

8 MR. CERIMELE: Thank you, your Honor. We filed a
9 sentencing submission dated February 21, 2022, and I will
10 incorporate that by reference. I intend to be brief.

11 I did want to highlight the following: Number one,
12 both the government and the defendant are seeking a variance
13 here.

14 THE COURT: Yes. It's interesting. The probation
15 officer did ask for a guideline sentence, albeit at the low end
16 of the guideline range; the defense asks for a noncustodial
17 sentence; and the government, very much to its credit, I think,
18 recognized that the guidelines were too high in this particular
19 case and asked for, if I recall correctly, a 39-month sentence.
20 But there's still a long way between 0 and 39. So let's hear
21 from defense counsel.

22 MR. CERIMELE: No question, Judge. The reality is the
23 defendant is ultimately going to be removed from this country
24 and his family, and we believe that that is significant and
25 that warrants a significant variance.

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1 Number two, this is the defendant's first criminal
2 conviction. He has had no other run-ins with law enforcement
3 in his life.

4 Number three, this is a non-violent offense, and
5 Mr. Aning has never been a violent person.

6 Number four, Mr. Aning was an easily replaceable
7 member of the conspiracy. He was fungible.

8 THE COURT: Well, I'm not sure I understand. All your
9 other arguments I certainly understood. So in many
10 conspiracies there are lots of people who could do the evil
11 work, but only those who actually do it, or agree to do it,
12 commit a crime. So the fact that he could have been replaced
13 by someone else, what does that matter? He did what he did.

14 MR. CERIMELE: You're right, your Honor. And I equate
15 this to a drug conspiracy, right? When you have a totem pole,
16 those on top are giving the directions and those on the bottom
17 are the street-level dealers, right? And those are the people
18 who, if one person declined, easily replaceable; they can fill
19 that role with someone else. The point is that that is what
20 Mr. Aning was to this conspiracy. He was present in the United
21 States, which was significant, okay? Because he was present in
22 the United States, he became an easy target for his
23 co-conspirators, who were abroad. He was approached by his
24 co-conspirators abroad because he was in the United States and
25 he had the ability to get bank accounts. And ultimately he

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1 agreed. If he didn't agree, someone else would have filled
2 that role, but he was by no means a decision-maker, he by no
3 means gave directions; he accepted the directions and he
4 implemented them. And I'll get into this in a second, your
5 Honor. His role was instrumental, no doubt. If he wasn't part
6 of this conspiracy, the conspiracy didn't work. But if he
7 wasn't part of the conspiracy, someone else would have been.

8 Finally, Judge, point number five is that Mr. Aning
9 deeply regrets his decision to participate in this offense. It
10 was wrong. He accepted responsibility. And that is the single
11 most important thing that I will say this afternoon. He
12 admitted his wrongdoing, sooner than any other defendant, and
13 he fully disclosed his involvement to the government in June of
14 2021.

15 For nearly 30 years, Mr. Aning was a model member of
16 society. He's kind, he is generous, he is selfless, and that
17 is a theme that resonates through the letters that were
18 addressed to your Honor. I won't go through them. I know that
19 your Honor is in possession of them. But certainly, in every
20 letter written to your Honor, they describe Mr. Aning as
21 selfless. He worked tremendously hard, before he entered the
22 United States, to put himself in a position where he could
23 eventually come to the United States and be with his mother and
24 his sister. And then once he got to the United States,
25 legally, he worked tremendously hard to be an upstanding member

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1 of society. He went to school; he worked; he supported his
2 family. And then ultimately, a few years ago, he made an
3 egregious mistake.

4 THE COURT: Well, how do you square that with the fact
5 that he then voluntarily chose to involve himself in a fairly
6 sophisticated scheme where he opened numerous bank accounts and
7 took other measures that certainly suggested that he was
8 perfectly happy to make use of the fact that he was in the
9 United States to carry out the scheme?

10 MR. CERIMELE: You can't square it, your Honor. He
11 made a mistake. And it was an egregious mistake. Again, he
12 was approached by others from abroad to use bank accounts.
13 They needed the bank accounts to make the conspiracy work, and
14 he agreed. Initially he was ignorant to the fact that what he
15 was doing was criminal. He didn't know the details of the
16 conspiracy. He assumed he was doing something wrong, but he
17 couldn't tell you where the money was necessarily coming from
18 or what the money was going into the accounts for. Initially.
19 He later learned, and he continued to engage in that conduct.
20 For that he is regretful. And in a lot of ways, your Honor, a
21 significant sentence has already been imposed. He deals with
22 the consequences of his actions on a daily basis. He is
23 humiliated, he is embarrassed. His reputation has been
24 tarnished. He finds himself isolated. And early on, he also
25 spent quite some time in custody before he was afforded

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1 release.

2 Now as the Court is aware, Mr. Aning was also charged
3 with multiple co-conspirators. He did not know those
4 co-conspirators. But it is important for your Honor to assess
5 Mr. Aning's role related to the co-conspirators' roles, the
6 co-defendants' roles. As your Honor is aware, a couple of
7 weeks ago, Fred Asante pled guilty before your Honor. Asante
8 controlled over a dozen business bank accounts with deposits
9 totaling over 35 million, he profited close to \$650,000, and
10 the government seized about \$323,000 in his account upon his
11 arrest. He was also in possession of an expensive 2021
12 Mercedes-Benz at the time of his arrest. His co-defendants
13 were also in possession of a 2020 Bentley Continental and two
14 2019 Rolls Royces. Each of those last three had values in
15 excess of hundreds of thousands of dollars.

16 On the other hand, at the time of the offense, at the
17 time of his arrest, Mr. Aning was not in possession of luxury
18 cars or expensive jewelry or sacks of cash. He had a bank
19 account, a personal bank account that had about a thousand
20 dollars in it. And he had \$15,000 in debt. He received a
21 financial benefit for his conduct, right? He was motivated to
22 participate in the conduct for the money. For a young man, who
23 is living in north New Jersey, who was trying to go to school,
24 who was trying to pay for books, who was trying to support his
25 family, the money helped. He made \$170,000, not all at once.

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1 That's a substantial amount of money, no doubt, but it is a
2 pittance compared to his co-conspirators abroad and his
3 co-defendants in this case. That \$170,000 was, again, not made
4 at once, it was made over the course of several years, so he
5 made about 30 or \$40,000 a year. And he was wrong for doing
6 that, and shame on him. But he has accepted responsibility for
7 his conduct, your Honor. He accepted it quickly. He has
8 suffered immensely, and he will continue to suffer.

9 As I stated early on -- and I'll leave with this --
10 Mr. Aning is going to be removed from the United States after
11 his sentence. He will be permanently separated from his mother
12 and his sister. He has made selfish decisions that do not
13 represent who he is, and don't represent the person that he was
14 brought up to be, and he regrets that. But that is an
15 extraordinary penalty, it is a significant penalty, and that is
16 why we are asking for a significant variance.

17 With that, your Honor, I know that Mr. Aning would
18 like to address the Court.

19 THE COURT: Well, I'll hear first from the government.
20 So thank you very much. Let me hear from the government.

21 MR. CERIMELE: Thank you.

22 MR. RAVI: As the Court is aware, the government --

23 THE COURT: You can take off your mask.

24 MR. RAVI: Thank you. It feels like normal. All
25 right.

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1 As the Court is aware, the government is asking for a
2 sentence of no less than 39 months for the reasons we set forth
3 in our sentencing submission.

4 THE COURT: Let me ask you this. First, where do you
5 place this defendant in the hierarchy of the various people
6 you've indicted in this case?

7 MR. RAVI: Sure. So your Honor, there are
8 defendants -- and the government referenced another case that
9 was charged in front of Judge Cote with some other defendants
10 that were charged as part of the broader enterprise, but there
11 are essentially a few tiers of defendants, types of defendants
12 in this case. The first are what we'd call kind of money
13 mules, who largely were there to transport money and cash from
14 other folks who had bank accounts that received funds and that
15 were then kind of carrying this money abroad.

16 Then there's a kind of a second tier that had bank
17 accounts and that were involved in minimal amount of
18 transactions, largely in their own personal accounts, and that
19 they were then laundering that money abroad.

20 The third tier is the more sophisticated money
21 launderers, and I believe Mr. Aning falls within that tier.
22 These are defendants who opened companies for the purposes of
23 laundering money, so that they could launder money through
24 banks and business bank accounts as a personal bank account
25 because banks provide -- there's less scrutiny when it comes

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1 from business bank accounts because they'd be receiving
2 transactions in large amounts of money from various sources so
3 therefore there's less scrutiny. Mr. Aning falls within that
4 category.

5 Now I think as defense counsel alluded to, in just the
6 four defendants before your Honor, Mr. Aning is the least
7 culpable of those four defendants in that the amount of money
8 that he transported through his accounts was the least of the
9 four defendants before your Honor. There are other defendants
10 that were charged -- and the government mentioned some of them
11 in one of the footnotes in our submission -- that were similar
12 to Mr. Aning in that they also transported amounts of money
13 through business bank accounts. The amounts that those
14 defendants, however, were involved in were less than Mr. Aning.
15 Mr. Aning here has, you know, over the course of three years,
16 received at least \$1.7 million in fraud proceeds that involved
17 nine bank accounts that he had opened and involved eight
18 different banks. So his conduct was extensive. This is not a
19 one- or two-transaction person who made a mistake and then
20 regretted it. This is someone who chose, over three years, to
21 engage in this conduct. And he received victim money from 62
22 different victims, at a minimum, that the government has
23 identified. And he made \$170,000 in profits. This is
24 significant conduct, and, you know, the overarching purpose of
25 sentencing that would be served here would be to reflect the

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1 seriousness of this offense, to promote respect for the law,
2 and to provide for just punishment.

3 The second kind of big sentencing factor here that's
4 relevant is general deterrence. I think, you know, defense
5 counsel made the point that, well, Mr. Aning got caught and
6 he's going to get sentenced but there's anyone who can do this
7 work. I don't disagree with that statement, your Honor, but
8 it's important that there be a significant sentence given here
9 to discourage others and to send a message that, you know, if
10 you choose to engage in this conduct and you choose to engage
11 in extensive conduct like this over multiple years, involving
12 dozens of victims and millions of dollars, you will get a
13 substantial sentence.

14 THE COURT: Well, that, of course, is true as a
15 general proposition, but the studies that have been conducted
16 to try to ascertain the effect of general deterrence in
17 white-collar crimes have not been able to show that, for
18 example, a three-year sentence has a significantly more
19 deterrent effect than a one-year sentence. So what you say is
20 true as far as it goes, but it's I think of limited value in
21 determining a specific sentence. It is unquestionably true
22 there are a lot of studies that show that would-be white-collar
23 miscreants are deterred if they know there is a likelihood of
24 prison that follows. So the argument against time served would
25 be applicable there. But there is no study that I'm aware of,

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1 unless you are, that that general deterrence effect in a
2 white-collar case is not served by a one-year sentence or a
3 two-year sentence, it can only be served by a three-year
4 sentence or whatever.

5 MR. RAVI: I hear you, your Honor, on that, and I'm
6 not aware of another study either, and I think it's very hard
7 to measure the effect of these sentences.

8 THE COURT: That's correct. It's very hard to
9 measure. You got it.

10 MR. RAVI: So I hear your Honor on that. I think what
11 we have here are, you know, the data points regarding other
12 defendants who have been sentenced to significant jail time for
13 less amounts of money, at least in a companion case.

14 THE COURT: Let me ask you one other question. He
15 proffered cooperation. Ultimately, as I understand, it wasn't
16 something the government needed. Was his proffer, in your
17 view, truthful?

18 MR. RAVI: It was truthful, your Honor. I think the
19 other kind of big reason the government didn't continue with
20 cooperation was, the defendant simply wasn't able to provide
21 much information about the people he was laundering the money
22 for.

23 There's just one other point I want to make, just
24 about the purpose of addressing unwarranted sentencing
25 disparities. Defense counsel mentions in their letter, they

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1 provide some statistics to the Court that for offenders in a
2 criminal history category of I, the mean sentence was 16 months
3 and the median was six months. You know, I think the Court
4 probably is aware that, you know, that does not at all reflect
5 in any way their offense level. This is all defendants in 2020
6 who were sentenced with a criminal history category of I.

7 THE COURT: Yes. One of the reasons that I don't much
8 care for the guidelines—although there are many, many
9 reasons—is that it's all sort of numbers playing, and I think
10 that's true, perhaps to a lesser extent, about the point you're
11 just referring to in defense counsel's papers. What's critical
12 I think for any judge is to look at the facts of the case
13 before him, the facts of the person, the human being before
14 him, and not to get caught up with more than a modest reliance
15 on comparisons with other cases, which the judge often knows
16 nothing about. The guidelines, in their wisdom or lack
17 thereof, attempted to do away with disparities. That's a total
18 myth. They've created far greater mischief than any cure that
19 they've had on disparities. Most disparities are achieved
20 these days through plea bargaining, where the courts have no
21 say and the guidelines have no say, other than, as part of the
22 negotiation, a guideline range is determined. So we have the
23 irony that it is the parties and mostly the government that is
24 determining guidelines sentences, and they're all over the lot,
25 depending on the prosecutor, depending on the case, whatever,

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1 and yet the myth is, oh, the guidelines will therefore do away
2 with disparities. Well, no, it's just forced the disparities
3 back to a secret negotiation that can never be measured by the
4 Court. So the same is true I think in furtherance of what
5 you're saying with respect to here's what a mass of people get
6 in category I or whatever. To me it's not irrelevant, but it's
7 not highly relevant.

8 MR. RAVI: Your Honor, and just to respond to some of
9 the statistics that defense counsel gave, I looked at the --
10 there's something called the Judiciary Sentencing Information
11 Tool, which the Court might be aware of, and, you know, for the
12 past five years, from 2016 to 2020, for all defendants like
13 Mr. Aning who had guidelines under 2B1.1, with a category I and
14 an offense level of 24, which he has, there were 442 offenders
15 in that category for those five years, and 97 percent of them
16 received a sentence of imprisonment, and of those 97 percent,
17 the average length of imprisonment was 40 months and the median
18 was 42 months.

19 THE COURT: Right. And that's, in my mind, just as
20 irrelevant as the statistics that your adversary gave. But
21 thank you anyway.

22 MR. RAVI: Thought you should hear from both sides at
23 least, your Honor.

24 THE COURT: You know, I can't wait till law schools,
25 instead of offering a course in criminal law, offer a course in

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1 advanced arithmetic. But in any event, I hear what you're
2 saying.

3 MR. RAVI: So to that end, your Honor, we have this
4 defendant before us. I think the Court is aware of the
5 defendant's criminal conduct here, weighed against some of the
6 good factors here, which is the defendant's acceptance of early
7 responsibility, his coming in and his truthfulness during the
8 proffer, which drives the government's below-guidelines
9 recommendation.

10 THE COURT: Thank you very much.

11 Let me hear from the defendant, if he wishes to be
12 heard.

13 THE DEFENDANT: Good afternoon, your Honor. My name
14 is Lord Aning.

15 I just want to say I'm like deeply sorry for my
16 actions. And I'm really very aware of the consequences now. I
17 just wish I knew better, and made better choices, and I wished
18 I had listened to my family earlier on, because if I did, I
19 wouldn't be here right now, due to the fact that this isn't the
20 way they raised me, and I just want to say I'm sorry for
21 letting them down. And to all the victims involved. To some
22 extent I didn't know how everything was moving around. I later
23 got to know, but -- so I didn't really know everything like
24 hundred percent, but still, I'm sorry for my actions. And
25 standing here, I already feel ashamed, looking back home to my

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1 friends, to my family. I really recall when I was released
2 from jail, a few friends came over, and one thing they actually
3 say that kept ringing in my mind was, they looked on me very
4 disappointed, and majority of them were surprised to see me
5 doing something like that because they actually all looked up
6 to me, expected better things from me, because I was always
7 there for them, motivating them, trying to keep smiles on their
8 faces, and I really let everybody down. I wish I knew every
9 victim's house or probably where they lived so I could just go
10 and say sorry to them. That's how I really feel.

11 And to my family and my close friends and loved
12 ones -- I wish a lot of them were here -- I just want to say
13 I'm sorry, for letting them down and not being able to live up
14 to the person they wanted to see me be.

15 Thank you.

16 THE COURT: Thank you very much.

17 Well, on the one hand, the Court is not convinced that
18 a substantial period of incarceration such as suggested by the
19 government is necessary to serve the general deterrence
20 function of Section 3553, though conversely, the Court is of
21 the view that some prison time is always required to serve a
22 meaningful general deterrence in all but the most exceptional
23 white-collar cases. White-collar cases are committed, as this
24 one was, for the money, and therefore no amount of monetary
25 fine or restitution or whatever is going to be a meaningful

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1 deterrent; only prison time is a deterrent. I'm talking about
2 general deterrence now.

3 So the hard question is: How much prison time? So
4 the defendant has many positive things in his character, and I
5 think that was illustrated by the fact that upon his arrest, he
6 immediately sought to cooperate and tell the facts. Now it
7 turned out he wasn't someone the government needed, and the
8 government rightly doesn't just willy nilly cut cooperation
9 agreements with everyone who fesses up. But nevertheless, it
10 speaks to the defendant's ultimate ambivalence about his
11 misconduct that, once caught, he fessed up and was willing to
12 cooperate against others if the government had chosen to use
13 him for that purpose. And those who do cooperate with the
14 government often get very substantial reductions in sentence,
15 and so even those who don't get that same benefit, because
16 their cooperation is not used, do fulfill some of the same
17 functions that cooperators do, or at least it evidences a more
18 positive side of their character.

19 But on the other hand, what really stands out about
20 this case is the amount of time the defendant spent helping to
21 steal money from innumerable human beings. The restitution
22 order that was presented to me, and which I have just signed
23 and will give to my courtroom deputy to docket, lists just
24 large, large number of victims, who range all the way from
25 people who lost a thousand dollars to a person who lost

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1 \$150,000. And by the way, the chance that these folks will get
2 their money back is extremely low. The restitution provisions
3 of federal law are, unfortunately, more a matter of paper than
4 a matter of reality. I will throw in one statistic of my own,
5 which is that overall, less than 10 percent of all restitution
6 that's imposed by the courts is actually paid. And that's
7 understandable, because when the folks get caught who committed
8 the crimes, they're usually either out of money or soon will
9 be. But these are real victims—not one, not two, but dozens of
10 real victims—and they cannot be forgotten when a court imposes
11 sentence.

12 So the sentence of the Court is that the defendant is
13 sentenced to 24 months in prison, to be followed by three years
14 of supervised release, although that may turn out to be moot
15 given the immigration issues. But the terms of supervised
16 release I'll get to in a moment.

17 No fine will be imposed because there is this
18 restitution order, which I will now hand to my courtroom deputy
19 to file, which is in the total sum of \$1,704,408.52, and that,
20 needless to say, will exhaust, or more than exhaust any funds
21 that this defendant has available.

22 There is, however, a \$100 mandatory special assessment
23 that must be paid.

24 The terms of supervised release are:

25 First, the mandatory conditions that the defendant not

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1 commit any other federal, state, or local crime;

2 That he not unlawfully possess a controlled substance;

3 That he make restitution in accordance with the
4 schedule that I'll set in a moment; and

5 That he cooperate in the collection of DNA.

6 The other mandatory condition, the drug testing
7 condition, is suspended, based on the Court's determination
8 that the defendant poses a low risk of future substance abuse.

9 There will also be imposed the standard conditions 1
10 through 12. They appear on the face of the judgment, but will
11 also be gone over with the defendant when he reports to the
12 probation office, which he must do within 72 hours of his
13 release from prison.

14 And there are the special conditions:

15 First, that he provide the probation office with
16 access to any requested financial information.

17 Second, that he not incur new credit charges or open
18 additional lines of credit without the approval of the
19 probation officer unless he is in compliance with the
20 installment payment schedule. The installment payment schedule
21 is that payment must be made beginning the second month of
22 supervised release at the rate of 15 percent of his gross
23 monthly income.

24 Third, that he must obey the immigration laws and
25 comply with the directives of the immigration authorities.

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1 And fourth, that he be supervised by the district of
2 his residence. Although, again, this may be superseded in
3 effect by deportation.

4 Before I advise the defendant of his right of appeal,
5 is there anything else that either counsel wishes to take up
6 with the Court? Anything from the government?

7 MR. RAVI: The government would move to dismiss all
8 open counts against the defendant.

9 THE COURT: That motion is granted.

10 MR. CERIMELE: Your Honor, at the end of our
11 sentencing submission, we requested that the defendant be --

12 THE COURT: I'm sorry?

13 MR. CERIMELE: Sorry. At the end of our sentencing
14 submission, we made a request that the defendant be able to
15 self-surrender.

16 THE COURT: Yes. So let's set the surrender date.

17 THE DEPUTY CLERK: April 12th before 2:00. That's a
18 Tuesday.

19 THE COURT: April 12th by 2 p.m.

20 Now I can't order where he will be detained but I can
21 recommend. Do you have a recommendation?

22 (Mr. Cerimele conferring with the defendant)

23 MR. CERIMELE: Your Honor, somewhere nearest where he
24 currently resides in Virginia.

25 THE COURT: Okay. I will so recommend.

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1 MR. CERIMELE: Thank you, your Honor.

2 THE COURT: So Mr. Aning, you have a right to appeal
3 this sentence. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And if you can't afford counsel for the
6 appeal, the court will appoint one for you free of charge. Do
7 you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Very good. Thanks a lot.

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